North Dakota Law Review

Volume 32 | Number 2 Article 9

1956

Insurance - Assignment of Policy - Validity of Oral Assignment

Gene Kruger

murder statutes specifically exempt justifiable and excusable homicide.[25] It seems that such an exemption should be implied in the Pennsylvania law.

The extreme position of the Pennsylvania court in the principal case is regrettable. It appears to be an unreasonable extension of an already unreasonable rule, and the anticipated effect would be to stamp as murderers all felons who are remotely associated with a homicide in the course of committing their felonious act. Such a result is obviously unjust and entirely lacking in logic. The desire to discourage the occurence of felonies is unquestionably a highly commendable motive, but in selecting a means to that end, the courts should never cease to temper their decisions with logical reasoning, where the legislative mandate permits.

GEORGE DYNES

INSURANCE — ASSIGNMENT OF POLICY — VALIDITY OF ORAL ASSIGNMENT — The plaintiff's husband obtained an insurance policy on his life, named his wife as beneficiary, and delivered the policy to her. He later took possession of the policy without the plaintiff's knowledge or consent and substituted his sister, the defendant, as beneficiary. Upon her husband's death the plaintiff sought to have herself declared the beneficiary of the policy, alleging an executed oral agreement under which she was to be named beneficiary in return for the payment by her of the premiums. On appeal from a summary judgment dismissing the complaint, the court *held* that a cause of action was stated. An oral agreement to name a beneficiary, plus manual delivery of the policy with intent to make a gift, amounted to a valid and enforceable assignment of the policy; that this assignment was not within the statute of frauds; and that a constructive trust resulted for the benefit of the plaintiff. *Katzman v. Aetna Life Insurance Co.*, 137 N.Y.S.2d 583, 128 N.E.2d 307 (1955).

Generally, full performance will take an oral agreement out of the statute of frauds,[1] provided it is established by clear proof.[2] The statute may not be successfully interposed as a defense in equity where it would aid in the perpetration of a fraud,[3] or in cases involving parol[4] or constructive[5] trusts.

A parol assignment of an insurance policy does not fall within the statute whether made as a gift[6] or for consideration. Delivery, which is essential to

25. N. Y. Penal Law §1044, (1950): "The killing of a human being, *unless it is excusable or justifiable*, is murder in the first degree, when committed . . . by a person engaged in the commission of, or in an attempt to commit a felony, either upon or affecting the person killed or otherwise." (Emphasis added).

1. Jones v. Jones, 333 Mo. 478, 63 S.W.2d 146 (1933); Bayreuther v. Reinisch, 34 N.Y. S.2d 674, 677 (1942), *aff'd.* 47 N.E.2d 959 (1943); Considine v. Considine, 7 N. Y. S.2d. 834 (1938); Burns v. McCormick, 233 N.Y. 230, 135 N.E. 273 (1922) (Part performance is insufficient unless it is unequivocally referable to the agreement).

2. *Accord* Stolar v. Turner, 237 Iowa 593, 21 N.W.2d 544 (1946).

3. Fleming v. Dillon, 370 Ill. 325, 18 N.E.2d. 910 (1938); Keystone Hardware Corp. v. Tague, 245 N.Y. 79, 158 N.E. 27 (1927) (Plaintiff-vendee not permitted to plead statute of frauds in action to recover purchase price under oral contract to convey land where defendant-vendor was willing to convey).

4. Blanco v. Velez, 295 N.Y. 224, 66 N.E.2d. 171 (1946).

5. Latham v. Fr. Divine, 299 N.Y. 22, 85 N.E.2d. 168 (1949); Bogart on Trusts, §56 (2d ed. 1942)(The constructive trust, created in equity, may be based upon oral evidence).

6. Continental Life Ins. Co. v. Sailor, 47 F.2d 911 (S.D. Cal. 1930); See Cooney v. Equitable Life Assur. Soc., 235 Minn. 377, 51 N.W.2d. 285 (1952); John Hancock Mut. Ins. Co. v. Sandrisser, 95 N.Y.S.2d 399 (1950); Young v. Prudential Ins. Co., 131 N.Y.S. 968 (1911).

the validity of a parol gift,[7] must be absolute, irrevocable, and intended to take immediate effect.[8] When a gift of an insurance policy is made, the insured loses the right to change the beneficiary,[9] notwithstanding a reservation of that power in the policy.[10] The donee acquires a vested interest in the proceeds of the policy[11] which cannot be divested, changed, or impaired without his consent.[12]

The holding in the instant case is contrary to the express provisions of section 31 (9) of the New York Personal Property Law. The statute was designed to prevent the perpetration of fraud upon a deceased person's estate by terminating litigation based on unsupported oral agreements.[13] It provides that every contract to assign, *or assignment,* or promise to name a beneficiary of an insurance policy, is void unless in writing.[14] The court's reason for permitting proof of the parol assignment, in face of this statutory prohibition is not clear. Much emphasis is placed upon the fact of actual delivery of the insurance policy. This plus the plaintiff's payment of the premiums, the confidential relation between the husband and wife, and the surreptitious taking of the policy by the husband in his attempt to change beneficiaries, speak strongly in favor of the final result.

The assignment to the plaintiff resulted in the complete divestment of the insured's title to the policy, and made his attempted change of beneficiary ineffectual.[15] The power to change a beneficiary exists under the policy as a power of appointment, and when the insured transfers his interest in the policy this power is extinguished.[16]

While the court's decision may be equitable, its apparent effect is to render the New York statute ineffective.

GENE KRUGER

INSURANCE — PREMIUMS, DUES AND ASSESSMENTS — RECOVERY OF PREMIUMS PAID DUE TO LACK OF CONSIDERATION — Plaintiff had purchased a public liability insurance from defendant to insure plaintiff against loss from liabilities which might arise from the negligent operation of a county hospital. Under the terms of a statute authorizing recovery of premiums where an insurer has incurred no risk of loss, plaintiff sought a return of all premiums paid, con-

7. Ratsch v. Rengel, 180 Md. 196, 23 A.2d. 680 (1942); Guardian Life Ins. Co. v. Mareczko, 114 N.J.Eq. 369, 168 Atl. 642 (1933).
8. Guardian Life Ins. Co. v. Mareczko, 114 N.J.Eq. 369, 168 Atl. 642 (1933).
9. John Hancock Mut. Life Ins. Co. v. Sandrisser, 95 N.Y.S.2d 399 (1950).
10. Stepson v. Brand, 213 Miss. 826, 58 So.2d. 18 (1952).
11. Cooke v. Cooke, 65 Cal. App.2d 260, 150 P.2d 514 (1944).
12. Continental Life Ins. Co. v. Sailor, 47 F.2d 911 (S.D. Cal. 1930); Miller v. Gulf Line Ins. Co., 152 Fla. 221, 12 So.2d. 127 (1942); Shepard v. New York Life Ins. Co., 87 Conn. 500, 89 Atl. 186 (1913).
13. Katzman v. Aetna Life Ins. Co., 137 N.Y.S.2d 583, 128 N.E.2d 307, 309 (1955).
14. New York Personal Property Law §31 (1943): "Agreements required to be in writing. Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking; . . . is a contract to assign or an assignment, with or without consideration to the promisor, of a life or health or accident insurance policy, or a promise, with or without consideration to the promisor, to name a beneficiary of any such policy. This provision shall not apply to a policy of industrial life or health or accident insurance."
15. Stepson v. Brand, 213 Miss. 826, 58 So.2d. 18 (1952); John Hancock Mut. Life Ins. Co. v. Sandrisser, 95 N.Y.S.2d 399 (1950).
16. Mutual Ben. Life Ins. Co. v. Swett, 222 Fed. 200 (6th Cir. 1915); Ehlerman v. Bankers' Life Co., 199 Iowa 417, 200 N.W. 408 (1924) (Ineffectual attempt to change beneficiary held not to be an assignment).